

**AFMA Form of Part [7] to the
Schedule to an ISDA Master Agreement
for Emissions Allowance Transactions (incorporating options)
(Version 1: May 2013)¹**

Part [7]. Emissions Allowance Transactions²

(a) Scope³

The provisions of this Part [7] apply solely in respect of Transactions that (i) are identified in the related Confirmation as Emissions Allowance Transactions or as otherwise being subject to the terms of this Part [7] and (ii) if the applicable Scheme is European, specify in the related Confirmation the Third Compliance Period as the applicable "Specified Compliance Period" (each such Transaction, an "**Emissions Allowance Transaction**").⁴⁵

(b) ISDA Definitions

The definitions and provisions contained in the 2006 ISDA Definitions, as published by the International Swaps and Derivatives Association, Inc. (the "**2006 ISDA Definitions**"), are incorporated into this Part [7]. In the event of any inconsistency between those definitions and provisions and this Part [7], this Part [7] will govern.

(c) Multiple Delivery Dates⁶

If the Confirmation for an Emissions Allowance Transaction specifies more than one Delivery Date and, in respect of each such Delivery Date:

- (i) a Payment Date;
- (ii) an Allowance Purchase Price or Allowance Strike Price, as applicable;
- (iii) the Allowance Type (and Specified Compliance Period); and
- (iv) the Number of Allowances,

is specified in, or is otherwise capable of being determined as provided in that Confirmation then, for the purposes of this Part [7] only the relevant Emissions Allowance Transaction shall be deemed to

¹ *Australian explanatory note:* This document is based on the Form of Part [7] to the Schedule to an ISDA Master Agreement for EU Emissions Allowance Transactions (Version 5: May, 2012) (Modified for Phase 3 delivery) as published by the International Swaps and Derivatives Association, Inc.

² *Australian explanatory note:* It is necessary for the parties using this Part [7] to determine in each case the suitability or otherwise of this Part [7] to the particular circumstances applicable to that case. This Part [7] (including its footnotes) is not intended to constitute a legal opinion or other professional advice on which users may rely in implementing actual transactions. Nor is it intended as a substitute for legal or other professional advice when documenting proposed transactions. In this regard, it is strongly recommended that intending users seek prior independent professional advice in respect of the legal, taxation, stamp duty, regulatory (including in relation to licensing, conduct and disclosure obligations) and other implications arising from the use of this Part [7].

³ *ISDA Footnote:* The authors of this Form of Part [7] have assumed that the transition from a national registry structure to the Union Registry will have been completed during 2012 (before the beginning of Phase 3). Should such migration process not occur prior to the commencement of Phase 3, specific advice should be sought on the impact which that may have on Phase 3 EU Emissions Allowance Transactions governed by this Form of Part [7].

⁴ *Australian explanatory note:* This document has not been prepared with the intention of applying to the sale or purchase of units which are eligible for surrender in respect of a fixed charge year under the Australian Scheme. Some changes will be needed to be included in the confirmation for such transactions.

⁵ *ISDA Footnote:* Parties should specify the Third Compliance Period as the Specified Compliance Period for all EU Emissions Allowance Transactions to be governed by the terms of this Part [7].

⁶ *Australian explanatory note:* If parties wish for Multiple Delivery Dates to apply to options, Multiple Exercise must be specified to be applicable in the relevant confirmation (see definition on page [27]).

consist of a number of Emissions Allowance Transactions: each one corresponding with one of the specified Delivery Dates, and having the Payment Date, Allowance Purchase Price or Allowance Strike Price (as applicable), Allowance Type (and Specified Compliance Period) and Number of Allowances specified or otherwise determined as provided in that Confirmation in respect of that Delivery Date.

(d) Terms

In respect of each Emissions Allowance Transaction:

(i) Physical Settlement

(1) Settlement

- (A) For purposes of an Allowance Forward Transaction, on the Payment Date, Buyer shall pay to Seller an amount equal to the Allowance Purchase Price multiplied by the Number of Allowances and on the Delivery Date Seller shall deliver to Buyer the Allowances to be Delivered and Buyer shall accept the Allowances to be Delivered, subject to and in accordance with the terms and conditions of this Agreement and the related Confirmation.
- (B) For purposes of an Allowance Option Transaction, in respect of each Exercise Date, on the relevant Payment Date Receiving Party shall pay to Delivering Party an amount equal to the Allowance Strike Price multiplied by the number of Allowances to be Delivered and on the relevant Delivery Date Delivering Party shall deliver to Receiving Party the Allowances to be Delivered, and Receiving Party shall accept the Allowances to be Delivered, subject to and in accordance with the terms and conditions of this Agreement and the related Confirmation.

(2) Delivery

- (A) Any obligation of Delivering Party to deliver Allowances pursuant to an Emissions Allowance Transaction shall be discharged by the completed transfer of those Allowances from a Holding Account of Delivering Party under and in accordance with the relevant Scheme. A transfer of Allowances shall be considered to be completed for the purpose of a delivery obligation pursuant to an Emissions Allowance Transaction when the relevant Allowances are received at the relevant Specified Holding Account of Receiving Party, whereupon risk of loss related to the Allowances or any portion thereof transfers from Delivering Party to Receiving Party.
- (B) Notwithstanding Part [7](d)(i)(2)(A) above, if Delivering Party has one or more Specified Holding Accounts for the relevant Emissions Allowance Transaction, Delivering Party's obligation to deliver Allowances under an Emissions Allowance Transaction shall be limited to an obligation to deliver from any such Specified Holding Account of Delivering Party to the relevant Specified Holding Account of Receiving Party.
- (C) Where Receiving Party has more than one Specified Holding Account in respect of an Emissions Allowance Transaction, such Specified Holding Accounts are set out in order of preference. Delivering Party shall deliver the Allowances to be Delivered to the first listed Specified Holding Account of Receiving Party on the Delivery Date unless, in respect of such Receiving

Party's Specified Holding Account, it is prevented from so doing by an event or circumstance that would be a Settlement Disruption Event or a Suspension Event if the first listed Specified Holding Account of Receiving Party were the only Specified Holding Account so listed. In such circumstances, the provisions of this paragraph will apply iteratively to the next listed Receiving Party's Specified Holding Account (if any).

- (D) If a transfer of Allowances is completed after 4:00 p.m., Scheme Time, on a Delivery Business Day or at any time on any day other than a Delivery Business Day, then those Allowances will be deemed to have been delivered at 10:00 a.m., Scheme Time, on the next following Delivery Business Day. If a transfer of Allowances is completed before 10:00 a.m., Scheme Time, on a Delivery Business Day, then those Allowances will be deemed to have been delivered at 10:00 a.m., Scheme Time, on that day.

(3) Netting

If on any date Allowances of the same Allowance Type and Specified Compliance Period would otherwise be deliverable in respect of two or more Emissions Allowance Transactions which are each in respect of the same Scheme⁷ by each party to the other and, if applicable, between the same pair of Holding Accounts of the parties, then, on such date, each party's obligation to make delivery of any such Allowances will be automatically satisfied and discharged and, if the aggregate amount of Allowances that would otherwise have been deliverable by one party exceeds the aggregate amount of Allowances that would otherwise have been deliverable by the other party, replaced by an obligation upon the party by which the larger aggregate amount would have been deliverable to deliver to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

(4) Settlement Disruption Event

(A) Notification of Settlement Disruption Event

Upon the occurrence of a Settlement Disruption Event, either party may notify the other party in writing of the commencement of the Settlement Disruption Event and the Emissions Allowance Transaction(s) affected by that Settlement Disruption Event. Where the notification is from the party affected by the Settlement Disruption Event, to the extent available to such party, it shall also provide details of the Settlement Disruption Event and a non-binding estimate of the extent and the expected duration of its inability to perform its obligations due to the Settlement Disruption Event.

(B) Effect of Settlement Disruption Event

If a Settlement Disruption Event occurs, the obligations of both parties which would otherwise be required to be performed with respect to the Emissions Allowance Transaction(s) affected by the Settlement Disruption Event will be suspended for the duration of the Settlement Disruption Event and, subject to [7](d)(i)(4)(D) (*Continuing Settlement Disruption Event*)

⁷ *Australian explanatory note:* This Part [7] allows parties to specify in each Confirmation whether the Transaction is to relate to the rules of the Australian Scheme or the European Scheme for the purpose of calibrating provisions relating to matters such as timing, Abandonment of Scheme and other issues. This is different to specifying the type of unit to which a transaction refers. This document is not intended to have all adjustments necessary for transactions in Australian units being conducted under the European Scheme or transactions in European units under the Australian scheme.

below, will not be required to be performed until the Settlement Disruption Event is overcome or ceases to exist. During the continuation of the Settlement Disruption Event, the party affected by the Settlement Disruption Event shall continue to use all reasonable endeavours to overcome the Settlement Disruption Event.

(C) Settlement Disruption Event Delayed Performance

Subject to Part [7](d)(i)(4)(D)(*Continuing Settlement Disruption Event*) below, upon the Settlement Disruption Event being overcome or ceasing to subsist, both parties will be required, as soon as reasonably practicable but not later than the second Delivery Business Day following the date upon which the Settlement Disruption Event has been overcome or ceases to exist, to resume full performance of their obligations under this Agreement in respect of the relevant Emissions Allowance Transaction(s) (including, for the avoidance of doubt, any suspended obligations).

(D) Continuing Settlement Disruption Event

In respect of an Emissions Allowance Transaction affected by a Settlement Disruption Event, where the Settlement Disruption Event continues:

- (I) during the period ending nine (9) Delivery Business Days after the original date that, but for the Settlement Disruption Event, would have been the Delivery Date for an Emissions Allowance Transaction; or
- (II) if such nine (9) Delivery Business Day period would end after the Reconciliation Deadline on or immediately following the original date that, but for the Settlement Disruption Event, would have been the Delivery Date for an Emissions Allowance Transaction, during the period ending on that Reconciliation Deadline; or
- (III) if the relevant Allowance Type is not an Australian Allowance or an Australian Credit⁸ and such nine (9) Delivery Business Day period would end after the day that is three (3) Delivery Business Days preceding the End of Phase Reconciliation Deadline on or immediately following the original date that, but for the Settlement Disruption Event, would have been the Delivery Date for an Emissions Allowance Transaction, during the period ending on the day that is three (3) Delivery Business Days preceding that End of Phase Reconciliation Deadline,

then on that (ninth) 9th Delivery Business Day, Reconciliation Deadline or (if the relevant Allowance Type is not an Australian Allowance or an Australian Credit) day that is three (3) Delivery Business Days preceding

⁸ *Australian explanatory note:* Provisions relating to the End of Phase Reconciliation Deadline do not apply to Australian Allowances or Australian Credits but will apply to Australian International Credits and to all European Scheme Transactions. Whilst the Australian Scheme is not directly affected by any European end of phase issues, there is the potential for systemic risk arising from the interconnectedness of the trade in international units. In circumstances where termination/illegalities are applying to a significant portion of a set of Transactions, a preferred market outcome is that they apply to all like transactions. Australian Allowances are excluded from this provision on the grounds that they are currently foreseen to be sufficiently independent of international unit trade as to not warrant inclusion in this provision. In the future, new unit sub-types with varying degrees of interconnectedness may become admissible as Australian International Credits - such as EUAs or non-Kyoto credits - which may warrant differing apply/not apply treatment but this is currently beyond the scope of this document.

the End of Phase Reconciliation Deadline (as the case may be), an [Additional Termination Event][Illegality]⁹ shall be deemed to have occurred in respect of which the relevant Emissions Allowance Transaction is the sole Affected Transaction, both parties are Affected Parties[, no Waiting Period will apply]¹⁰ and, if an Early Termination Date results from that Termination Event, then, for purposes of determining any amount payable under Section 6(e) in respect of that Early Termination Date: (i) if "Payment on Termination for Settlement Disruption" is specified to be applicable in the Annex to this Part [7] or the Confirmation for the relevant Emissions Allowance Transaction, it will be deemed that the requirement to perform the suspended obligations resumed on the Early Termination Date; or (ii) if "Payment on Termination for Settlement Disruption" is specified to be inapplicable in the Annex to this Part [7] or the Confirmation for the relevant Emissions Allowance Transaction, it will be deemed that the parties had no further delivery or payment obligations in respect of the Emissions Allowance Transaction after the occurrence of the Settlement Disruption Event (other than in respect of any payment due by one party in connection with delivery obligations already performed by the other party); provided, however, that (i) Delivering Party shall promptly refund to Receiving Party any amount that may have been paid by Receiving Party in respect of the Emissions Allowance Transaction that is an Allowance Forward Transaction or a Call and; (ii) Receiving Party shall promptly refund to Delivering Party any amount that may have been paid by Delivering Party in respect of an Emissions Allowance Transaction that is a Put (in each case, other than in respect of delivered Allowances¹¹) together with interest on that amount in the same currency as that amount for the period from (and including) the date that amount was paid to (but excluding) the date of termination of such Emissions Allowance Transaction, at the rate certified by the party required to refund the amount to be a rate offered to such party by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by that party for purposes of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in the relevant market.

(5) Suspension Event

(A) Notification of Suspension Event

Upon the occurrence of a Suspension Event, the party affected by the Suspension Event shall, as soon as reasonably practicable, notify the other party in writing of the commencement of the Suspension Event. To the extent available to the party affected by the Suspension Event, it shall also provide details of the Suspension Event including a non-binding estimate of the duration of its inability to perform its obligations due to the Suspension Event.

(B) Effect of Suspension Event

⁹ **ISDA Footnote:** If the form of Master Agreement in which this Part[7] is included is a 1992 ISDA Master Agreement (Multicurrency-Cross Border) the parties should specify "Additional Termination Event" or, if the form of Master Agreement which the Confirmation supplements is an ISDA 2002 Master Agreement the parties should specify "Illegality".

¹⁰ **ISDA Footnote:** Include if the form of Master Agreement in which this Part [7] is included is an ISDA 2002 Master Agreement.

¹¹ **Australian explanatory note:** Premium payments for outstanding options in respect of which no delivery has been made are not included.

Where a Suspension Event occurs, the obligations of both parties which would otherwise be required to be performed with respect to the Emissions Allowance Transaction(s) affected by the Suspension Event will be suspended for the duration of the Suspension Event and, subject to Part [7](d)(i)(5)(D)(*Continuing Suspension Event*) below, will not be required to be performed until the Suspension Event ceases to exist.

(C) Suspension Event Delayed Performance

Subject to Part [7](d)(i)(5)(D)(*Continuing Suspension Event*) below, upon the Suspension Event ceasing to exist, both parties will be required to resume full performance of their obligations under this Agreement in respect of the relevant Emissions Allowance Transaction (including, for the avoidance of doubt, any suspended obligations) as soon as possible but no later than the day that is the earlier of: (i) the tenth Delivery Business Day following the date on which the Suspension Event ceases to exist; and (ii) 3 Delivery Business Days prior to either, if the applicable Scheme is European, the End of Phase Reconciliation Deadline or, if the applicable Scheme is Australian, the Long Stop Date (the "**Delayed Delivery Date**").

In the event that the Allowances to be Delivered are delivered to Receiving Party on or before the Delayed Delivery Date following the occurrence of a Suspension Event as contemplated by Part [7](d)(i)(5)(B)(*Effect of a Suspension Event*) above, Receiving Party agrees to pay Delivering Party on the Delayed Payment Date:

- (I) for the purposes of an Allowance Forward Transaction, an amount equal to the sum of: (X) Allowance Purchase Price multiplied by the Number of Allowances delivered on or before the relevant Delayed Delivery Date; and (Y) the Cost of Carry Amount; or
- (II) for the purposes of an Allowance Option Transaction, an amount equal to the sum of: (X) the Allowance Strike Price multiplied by the Number of Allowances delivered on or before the relevant Delayed Delivery Date; and (Y) the Cost of Carry Amount.

For the avoidance of doubt, the Cost of Carry Amount shall be identified in the relevant [VAT]/[GST]¹² Invoice sent to Receiving Party.

(D) Continuing Suspension Event

Where: (I) a Suspension Event continues to exist on the Long-Stop Date then an [Additional Termination Event]/[Illegality]¹³ shall be deemed to have occurred in respect of which the relevant Emissions Allowance Transaction is the sole Affected Transaction [,]/[and] both parties are Affected Parties [and no Waiting Period will apply].¹⁴ The parties agree that the Long-Stop Date will be the Early Termination Date for the purposes of the relevant Emissions Allowance Transaction. For purposes of determining any amount payable under Section 6(e) in respect of that Early

¹² *Australian explanatory note:* See footnotes [20] to [25].

¹³ *ISDA Footnotes:* If the form of Master Agreement in which this Part[7] is included is a 1992 ISDA Master Agreement (Multicurrency-Cross Border) the parties should specify "Additional Termination Event" or, if the form of Master Agreement which the Confirmation supplements is an ISDA 2002 Master Agreement the parties should specify "Illegality".

¹⁴ *ISDA Footnotes:* Include if the form of Master Agreement in which this Part [7] is included is an ISDA 2002 Master Agreement.

Termination Date, it will be deemed that the parties had no further delivery or payment obligations in respect of the Emissions Allowance Transaction after the occurrence of the Suspension Event (other than in respect of any payment due by one party in connection with delivery obligations already performed by the other party); provided, however, that (i) Delivering Party shall promptly refund to Receiving Party any amount that may have been paid by Receiving Party in respect of the Emissions Allowance Transaction that is an Allowance Forward Transaction or a Call and (ii) Receiving Party shall promptly refund to Delivering Party any amount that may have been paid by Delivering Party in respect of an Emissions Allowance Transaction that is a Put (in each case, other than in respect of delivered Allowances¹⁵) together with interest on that amount in the same currency as that amount for the period from (and including) the date that amount was paid to (but excluding) the date of termination of such Emissions Allowance Transaction, at the rate certified by the party required to refund the amount to be a rate offered to such party by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by that party for purposes of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in the relevant market.

(ii) Failure to Deliver

If Delivering Party fails to deliver the Allowances to be Delivered on the Delivery Date, such failure shall not constitute an Event of Default (as defined in the Agreement) in respect of Delivering Party, but the following provisions shall apply.

(1) Failure to Deliver by Delivering Party

If the failure to deliver occurs other than as a result of the failure of Receiving Party to comply with the Requirements under the Scheme as specified below, the existence of an Illegality, the existence of a Settlement Disruption Event, the existence of a Suspension Event or an Abandonment of the Scheme as described in Part [7](d)(iv)(1), the Payment Date will be postponed and Receiving Party may, by notice to Delivering Party, require Delivering Party to remedy such failure, and the following provisions shall apply.

(A) Failure to Deliver Remedied

If Delivering Party delivers the Allowances to be Delivered on or before the Final Delivery Date:

- (X) in respect of an Allowance Forward Transaction, Receiving Party shall pay to Delivering Party on the Payment Date an amount equal to the Allowance Purchase Price multiplied by the Number of Allowances and, in respect of an Allowance Option Transaction, Receiving Party shall pay to Delivering Party on the Payment Date an amount equal to the Allowance Strike Price multiplied by the number of Allowances to be Delivered (and, in each case, for

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Australian explanatory note: Premium payments for outstanding options in respect of which no delivery has been made are not included.

purposes of determining the Payment Date, the date of actual delivery shall be deemed to be the Delivery Date); and

- (Y) Delivering Party shall pay to Receiving Party on the Payment Date (determined in accordance with Part [7](d)(ii)(1)(A)(X) above) interest on an amount equal to the number of Allowances that were required to be delivered on the Delivery Date (but which were not delivered on such date) multiplied by either the Allowance Purchase Price (in respect of an Allowance Forward Transaction) or the Allowance Strike Price (in respect of an Allowance Option Transaction) for the period from (and including) the original Delivery Date to (but excluding) the date of actual delivery at the Default Rate.

(B) Failure to Deliver Not Remedied

If the failure is not remedied on or before the Final Delivery Date:

- (X) if "Excess Emissions Penalty" is specified not to be applicable in the Annex to this Part [7] or the Confirmation for the relevant Emissions Allowance Transaction, or if "Excess Emissions Penalty" is specified to be applicable in the Annex to this Part [7] or the Confirmation for the relevant Emissions Allowance Transaction and an EEP Risk Period is specified in that Confirmation but the Delivery Date does not fall within that EEP Risk Period, Receiving Party may, by written notice to Delivering Party, terminate the parties' obligations under "Physical Settlement" above in respect of the Emissions Allowance Transaction in respect of which the failure has occurred and Delivering Party shall pay to Receiving Party an amount determined in accordance with paragraph (a) of Receiving Party's Replacement Cost (if a positive number) on the first succeeding Business Day, adjusted to take into account any amount previously paid (which, for the avoidance of doubt, shall not include any Premium paid by the Buyer in respect of an Allowance Option Transaction) by Receiving Party to Delivering Party in respect of the relevant Emissions Allowance Transaction; or
- (Y) if "Excess Emissions Penalty" is specified to be applicable in the Annex to this Part [7] or the Confirmation for the relevant Emissions Allowance Transaction and, if an EEP Risk Period is specified in the Confirmation for the relevant Emissions Allowance Transaction, the Delivery Date falls within that EEP Risk Period for the relevant Emissions Allowance Transaction, Receiving Party may, by written notice to Delivering Party, terminate the parties' obligations under "Physical Settlement" above in respect of the Emissions Allowance Transaction in respect of which the failure has occurred and Delivering Party shall pay to Receiving Party an amount determined in accordance with paragraph (b) of Receiving Party's Replacement Cost (if a positive number) on the first Business Day following the day on which Receiving Party is able to effect a Buy-In (which may be a Buy-In, on any such date, of less than the entire number of Undelivered Allowances) if and to the extent that paragraphs (b)(i)(A) or (b)(i)(B)(X) of Receiving Party's Replacement Cost apply, or the first Business Day following the

day on which Receiving Party is able to effect a purchase of Allowances in accordance with paragraph (b)(i)(B)(Y) of Receiving Party's Replacement Cost, if and to the extent that paragraph applies, in either case adjusted to take into account any amount previously paid (which, for the avoidance of doubt, shall not include any Premium paid by the Buyer in respect of an Allowance Option Transaction) by Receiving Party to Delivering Party in respect of the Emissions Allowance Transaction.

- (Z) if "Failure to Deliver (Alternative Method)" is specified to be applicable in the Annex to this Part [7] or the Confirmation for the relevant EU Emissions Allowance Transaction:
 - (aa) Delivering Party shall pay to Receiving Party, on the first succeeding Business Day, an amount determined in accordance with paragraph (c) of Receiving Party's Replacement Cost (if a positive number), adjusted to take into account any amount previously paid (which, for the avoidance of doubt, shall not include any Premium paid by the Buyer in respect of an Allowance Option Transaction) by Receiving Party to Delivering Party in respect of the relevant EU Emissions Allowance Transaction, and upon payment of such amount, Delivering Party's obligation to deliver to Receiving Party the Allowances to be Delivered shall be fully discharged and terminated; and
 - (bb) if "Excess Emissions Penalty" is specified to be applicable in the Annex to this Part [7] or the Confirmation for the relevant EU Emissions Allowance Transaction, Delivering Party shall pay to Receiving Party the amount, if any, determined in accordance with the provisions of Part [7] (d)(xi)(Failure to Deliver (Alternative Method) – EEP Applicable) below on the date determined in accordance with those provisions.

(2) Failure to Comply by Receiving Party

If the failure to deliver occurs as a result of the failure of Receiving Party to comply with the Requirements under the Scheme as specified below, the Payment Date will be postponed and Delivering Party may, by notice to Receiving Party, require Receiving Party so to comply, and the following provisions shall apply.

(A) Failure to Comply Remedied

If Receiving Party complies on or before the Final Compliance Date:

- (X) Delivering Party shall deliver to Receiving Party the Allowances to be Delivered and, in respect of an Allowance Forward Transaction, Receiving Party shall pay to Delivering Party on the Payment Date an amount equal to the Allowance Purchase Price multiplied by the Number of Allowances and, in respect of an Allowance Option Transaction, Receiving Party shall pay to Delivering Party on the Payment Date an amount equal to the Allowance Strike Price multiplied by the number of Allowances to be Delivered (and, in

each case, for purposes of determining the Payment Date, the date of actual delivery shall be deemed to be the Delivery Date); and

- (Y) Receiving Party shall pay to Delivering Party on the Payment Date (determined in accordance with Part [7](d)(ii)(2)(A)(X) above) interest on an amount equal to the number of Allowances that were required to be delivered on the Delivery Date (but which were not delivered on that date) multiplied by the Allowance Purchase Price or Allowance Strike Price, as applicable, for the period from (and including) the original Delivery Date to (but excluding) the date of actual delivery at the Default Rate.

(B) Failure to Comply Not Remedied

If Receiving Party fails to comply on or before the Final Compliance Date, Delivering Party may, by written notice to Receiving Party, terminate the parties' obligations under "Physical Settlement" above in respect of the Emissions Allowance Transaction in respect of which the failure has occurred and Receiving Party shall pay to Delivering Party an amount equal to Delivering Party's Replacement Cost (if a positive number) on the first succeeding Business Day, adjusted to take into account any amount previously paid (which for the avoidance of doubt, shall not include any Premium paid by the Buyer in respect of an Allowance Option Transaction) by Receiving Party to Delivering Party in respect of the relevant Emissions Allowance Transaction.

(3) EEP Amount

Subject to the paragraph below, if "Excess Emissions Penalty" is specified to be applicable in the Annex to this Part [7] or the Confirmation for the relevant Emissions Allowance Transaction and as a result of Delivering Party's failure to deliver the Allowances to be Delivered (in whole or in part) on the Delivery Date Receiving Party becomes liable to pay any EEP Amount, then Receiving Party shall provide to Delivering Party, upon its reasonable request, evidence to the reasonable satisfaction of Delivering Party:

- (A) that Receiving Party has incurred an EEP Amount consequent on Delivering Party's failure to deliver the Allowances to be Delivered (in whole or in part); and
- (B) the extent to which the requirement for Receiving Party to pay any EEP Amount results from Delivering Party's failure to make such delivery; and
- (C) that Receiving Party could not have used Allowances to which it had title in any Holding Account(s) in any Registry in order to avoid or reduce its liability to pay any EEP Amount which it claims from Delivering Party as part of Receiving Party's Replacement Cost.

Delivering Party's obligation to pay any EEP Amount in accordance with "Failure to Deliver" under Part [7] of the Schedule to this Agreement is subject to Receiving Party's overriding obligation to use its reasonable endeavours to avoid becoming liable for such EEP Amount or, when liable, to mitigate the payment obligation in relation to such EEP Amount and to allocate any such EEP Amount pro-rata between all counterparties of Receiving Party that have failed to deliver Allowances

to Receiving Party provided, however, that where Receiving Party confirms it has been unable to avoid becoming liable for any EEP Amount, it shall be for Delivering Party to show that it has been as a result of Receiving Party failing to use its reasonable endeavours to do so.

(4) EEP Recovery Reimbursement

If “EEP Recovery Reimbursement” is specified to be applicable in the Confirmation for the relevant Emissions Allowance Transaction and the relevant Scheme is Australian then, in the event that Delivering Party has paid an EEP Amount in accordance with “Failure to Deliver” under Part [7] of the Schedule to this Agreement, Receiving Party agrees to use its reasonable endeavours to apply for the remission of any part of the EEP Amount if it is entitled to do so under the Scheme. If the Relevant Authority subsequently remits to Receiving Party (or at its direction) any part of the EEP Amount in accordance with the terms of the Scheme then Receiving Party will allocate the amount remitted (net of Receiving Party’s reasonable costs in applying for the remission) pro-rata between all counterparties of Receiving Party that have paid an EEP Amount to Receiving Party (which relates to the EEP Amount remitted by the Relevant Authority) and Receiving Party will promptly pay to Delivering Party the amount so allocated to it.¹⁶

(iii) Partial Settlement

If, on the Delivery Date, Delivering Party delivers to Receiving Party fewer Allowances than the Allowances to be Delivered (such shortfall the "**Allowance Shortfall**"), Receiving Party's obligation to pay pursuant to Physical Settlement above shall be reduced by an amount equal to the Allowance Shortfall multiplied by either the Allowance Purchase Price (in respect of an Allowance Forward Transaction) or the Allowance Strike Price (in respect of an Allowance Option Transaction), and the provisions of "Failure to Deliver" above will apply in respect of the Allowance Shortfall (with references to Number of Allowances (in the case of an Allowance Forward Transaction) and Allowances to be Delivered (in the case of an Allowance Option Transaction) being read as references to the Allowance Shortfall).

(iv) Abandonment of Scheme

(1) If before the Delivery Date, an Abandonment of Scheme occurs in respect of the relevant Scheme, and (if one is specified) the Fallback Scheme¹⁷ specified in the relevant Confirmation, then (unless the Confirmation specifies otherwise) either party may, by written notice to the other party, terminate the relevant Emissions Allowance Transaction, in which case neither party shall have any further delivery or payment obligations under or in respect of that Emissions Allowance Transaction (other than in respect of any payment due by one party in connection with delivery obligations already performed by the other party¹⁸) and, for the avoidance of doubt, a payment shall not be due under Section 6(e) of the Agreement or otherwise in respect of such termination.¹⁹

¹⁶ *Australian explanatory note:* This provision provides for the reimbursement to the Seller of any shortfall charge subsequently remitted to the Buyer by the Australian Regulator following the Reconciliation Deadline. The Clean Energy Act grants the Regulator power to remit part of a unit shortfall charge in certain circumstances (see section 134A).

¹⁷ *Australian explanatory note:* This reference to Fallback Scheme is intended to clarify that if a Fallback Scheme is specified then an Abandonment of the original Scheme does not trigger the consequences of this provision. The last paragraph of the definition of Scheme sets out that from the time that an Abandonment of Scheme occurs with respect to the original Scheme the Fallback Scheme will be taken to be the relevant Scheme for the Emissions Allowance Transaction.

¹⁸ *Australian explanatory note:* Premium payments for outstanding options in respect of which no delivery has been made are not included.

¹⁹ *Australian explanatory note:* This allows another Scheme to govern the transaction if the primary Scheme is abandoned. Eg, EUA Allowances may still be eligible under the Australian Scheme in circumstances where an Abandonment of Scheme has occurred under the European Scheme.

- (2) In the event of a termination in accordance with sub-clause (1) Delivering Party shall promptly refund to Receiving Party any amount that may have been paid by Receiving Party in respect of the Emissions Allowance Transaction that is an Allowance Forward Transaction or a Call and Receiving Party shall promptly refund to Delivering Party any amount that may have been paid by Delivering Party in respect of an Emissions Allowance Transaction which is a Put together with interest on that amount in the same currency as that amount for the period from (and including) the date that amount was paid to (but excluding) the date of termination of the Emissions Allowance Transaction in accordance with sub-clause (1), at the rate certified by the party required to refund the amount to be a rate offered to such party by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by that party for purposes of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in the relevant market.

(v) **Invoicing**²⁰²¹

On or after the Delivery Date, Delivering Party shall send to Receiving Party a valid VAT invoice (applicable in the jurisdiction of supply) setting forth the number of Allowances delivered, or that would have been delivered but for the provisions of Part [7](d)(i)(3)(*Netting*), above, and the Allowance Purchase Price(s) or Allowance Strike Price(s), as applicable, stating the total amount payable by Receiving Party and stating the amount of VAT, if any, properly chargeable thereon (a "**VAT Invoice**").

(vi) **Requirements under the Scheme**

Each party agrees with the other that, so long as either party has or may have any obligation under an Emissions Allowance Transaction, it shall:

- (1) ensure that on a Delivery Date or Delayed Delivery Date (as the case may be) it has one or more valid Holding Accounts in the Relevant Registry and where it has one or more Specified Holding Accounts, ensure that on a Delivery Date or Delayed Delivery Date (as the case may be) it has all such Specified Holding Accounts validly registered in accordance with the relevant Scheme and if applicable, the relevant International Rules;
- (2) where it is Delivering Party, ensure that each Specified Holding Account of Receiving Party is nominated as a "trusted account" in its "trusted account list" for each of its Specified Holding Accounts (or other Holding Accounts, as applicable) for the purposes of the Registries Regulation; and
- (3) conduct its affairs so as not to give any Relevant Authority cause to block, suspend, refuse, reject or cancel the transfer (whether in whole or in part) of Allowances requested to be made pursuant to any Emissions Allowance Transaction.

(vii) **No Encumbrances**

In respect of each delivery of Allowances, Delivering Party shall deliver Allowances, free and clear of all liens, security interests, claims and encumbrances or any interest in or to them by any person (the "**No Encumbrance Obligation**").

²⁰ *Australian explanatory note:* Parties should take their own taxation advice in relation to this Part [7]. AFMA does not recommend including, or not including, any of the GST, VAT or other taxation wording.

²¹ *Australian explanatory note:* This invoicing provision is from the ISDA Part [7].

Where a party is in breach of the No Encumbrance Obligation, the following shall apply:

- (1) This Agreement and all other Transactions agreed by the parties under this Agreement shall continue unaffected.
- (2) Without prejudice to any defences available to Delivering Party (including, but not limited to, any defences of statutes of limitation or similar), following written notice of that breach from Receiving Party to Delivering Party (irrespective of how long after the relevant Delivery Date such notice is provided) and subject to Part [7](d)(vii)(4) below, Receiving Party shall:
 - (A) determine the Encumbrance Loss Amount arising from that breach either on the date such notice is deemed to be received or as soon as reasonably practicable thereafter; and
 - (B) shall notify Delivering Party of such Encumbrance Loss Amount due, including detailed support for its calculation.

Receiving Party is not required to enter into replacement transactions in order to determine the Encumbrance Loss Amount.

- (3) By no later than the third (3rd) Business Day after the later of (i) receipt of a valid invoice in connection with such Encumbrance Loss Amount and (ii) receipt of the above-mentioned notice including detailed support of Receiving Party's calculation of the Encumbrance Loss Amount, Delivering Party shall pay the Encumbrance Loss Amount to Receiving Party, which amount shall bear interest at the Default Rate. Upon payment of the Encumbrance Loss Amount by Delivering Party, the parties shall have no further obligations in respect of that Emissions Allowance Transaction and that breach. Receiving Party acknowledges that its exclusive remedies in respect of such breach are those set out in this Part [7](d)(vii)(*No Encumbrances*).
- (4) Where a breach of the No Encumbrances Obligation is caused by the transfer of an Affected Allowance, Delivering Party shall be liable for the Encumbrance Loss Amount if, at the date it first acquired, received or purchased such Affected Allowance, it was not acting in good faith; otherwise, Delivering Party shall only be liable for the Encumbrance Loss Amount (without prejudice to any other defences available to Delivering Party including, but not limited to, any defences of statutes of limitation or similar), if:
 - (A) Receiving Party, whether or not the holder of such Affected Allowance, who is subject to a claim of the Original Affected Party, has, in order to resist or avoid any Encumbrance Loss Amount from arising, used its best endeavours to defend such a claim in respect of that Affected Allowance (including, if available, by relying on Article 37 of the Registries Regulation or any equivalent legal principle under applicable national law) and was unsuccessful (other than for reasons of its own lack of good faith); or
 - (B) Receiving Party, whether or not the holder of such Affected Allowance, who acted in good faith in respect of its purchase of such Affected Allowance and who is subject to a claim of a third party (other than the Original Affected Party) in respect of that Affected Allowance, has used all reasonable endeavours to mitigate the Encumbrance Loss Amount.

[(viii) **Goods and Services Tax**^{22 23 24}

- (1) All amounts referred to in this Part [7] or in a Confirmation for an Emissions Allowance Transaction are exclusive of any applicable goods and services tax (“**GST**”) which are or may become chargeable in respect of the supply or supplies for which such sums form the whole or part of the consideration for GST purposes, and any such GST shall be payable in addition to any such other consideration in accordance with the provisions set out below.
- (2) Receiving Party will, subject to receipt of an appropriate GST Invoice in respect of such supply or supplies stating *inter alia* the amount of GST properly chargeable thereon (the “**GST Amount**”), pay to Delivering Party a sum equal to the GST Amount on the Payment Date in respect of such supply.]

[(viii) **Value Added Taxes**²⁵

- (1) All amounts referred to in this Part [7] or in a Confirmation for an Emissions Allowance Transaction are exclusive of any applicable Value Added Taxes (“**VAT**”) which are or may become chargeable in respect of the supply or supplies for which such sums form the whole or part of the consideration for VAT purposes, and any such VAT shall be payable in addition to any such other consideration in accordance with the provisions set out below.
- (2) Receiving Party shall either (A) subject to receipt of an appropriate VAT Invoice in respect of such supply or supplies stating *inter alia* the amount of VAT properly chargeable thereon (the “**VAT Amount**”), pay to Delivering Party a sum equal to the VAT Amount on the Payment Date; or (B) where, under the provisions of the applicable VAT legislation, Receiving Party is required to self-assess and account for any VAT chargeable in respect of such supply, account for such VAT.
- (3) If Receiving Party’s VAT Jurisdiction is the European Union, on each date on which an Emissions Allowance Transaction is entered into, Receiving Party represents to Delivering Party that:
 - (A) for VAT purposes, Receiving Party receives the services supplied pursuant to the Emissions Allowance Transaction in connection with an establishment of Receiving Party in that party's VAT Jurisdiction; and
 - (B) it is a taxable person for the purposes of Article 9 of the European Community Directive 2006/112/EC and receives such supply for the purposes of a business carried on by it.
- (4) Subject to each party's obligations relating to VAT, each party shall cause all royalties, Taxes, duties, and other sums (including any environmental tax or levy) legally payable by that party arising in connection with an Emissions Allowance Transaction to be paid, and shall reimburse the other party to the extent that party is required to pay any such royalties, Taxes, duties or other sums for which the first party is primarily liable.]

²² *Australian explanatory note:* Parties should take their own taxation advice in relation to this Part [7]. AFMA does not recommend including, or not including, any of the GST, VAT or other taxation wording.

²³ *Australian explanatory note:* This GST provision has been adapted from the ISDA VAT provision (the next alternative). Only one of the paragraphs (viii) would be included in a particular Part [7] depending on the relevant tax.

²⁴ *Australian explanatory note:* Parties should take their own taxation advice in relation to this Part [7]. AFMA does not recommend including, or not including, any of the GST, VAT or other taxation wording.

²⁵ *Australian explanatory note:* This is the VAT provision from the ISDA Part [7].

(ix) **No Consequential Loss**

Except to the extent included in any amount payable under Section 6(e) of the Agreement, any payment in respect of Receiving Party's Replacement Cost or Delivering Party's Replacement Cost, or any payment in respect of Encumbrance Loss Amount, neither party is liable to the other, whether in contract, tort (including negligence and breach of duty) or otherwise, for any business interruption or loss of use, profits, contracts, production or revenue or for any consequential or indirect loss or damage of any kind however arising.

(x) **Other Fees and Expenses**

All costs, fees and charges assessed or imposed by a Relevant Authority in connection with the transfer of Allowances pursuant to an Emissions Allowance Transaction shall be the responsibility of the party upon whom such costs, fees and/or charges are allocated by the Relevant Authority.

(xi) **Failure to Deliver (Alternative Method) - EEP Applicable**

If "Failure to Deliver (Alternative Method)" and "EEP" are specified to be applicable in the Annex to this Part [7] or the Confirmation for the relevant EU Emissions Allowance Transaction, then, with regard to that EU Emissions Allowance Transaction, in the event that Receiving Party **incurs** an Excess Emissions Penalty directly caused by Delivering Party's failure to deliver the Allowances to be Delivered on a Delivery Date falling within the EEP Risk Period other than as a result of the failure of Receiving Party to comply with the Requirements under the Scheme as specified above, the existence of an Illegality, the existence of a Settlement Disruption Event or the existence of a Suspension Event (the "**EEP Non-delivery**" and the amount of such Excess Emissions Penalty so caused, the "**Indemnifiable EEP**"), then Delivering Party shall pay to Receiving Party, in addition to the Receiving Party's Replacement Cost (if any), an amount equal to the amount of the Indemnifiable EEP paid by Receiving Party (the "**EEP Payment**"), provided that such EEP Payment shall not exceed the product of the RPRC Shortfall for that EU Emissions Allowance Transaction and the maximum per Allowance rate of Excess Emissions Penalty applicable at the relevant time.

Delivering Party's obligation to pay the EEP Payment in respect of the EEP Non-delivery shall be conditional upon Receiving Party demonstrating to the reasonable satisfaction of Delivering Party:

- (a) that Receiving Party has incurred and paid the EEP Payment consequent on a shortfall of Allowances as at the Reconciliation Deadline immediately succeeding the Delivery Date (the "**Deadline Shortfall**");
- (b) the extent to which Receiving Party's liability to make the EEP Payment resulted from Delivering Party's EEP Non-delivery;
- (c) the extent to which Receiving Party's liability to make the EEP Payment would have been incurred notwithstanding Delivering Party's EEP Non-delivery; and
- (d) the extent to which Receiving Party's liability to make the EEP Payment arose due to any third party's failure(s) to deliver any Allowance to be Delivered to Receiving Party in accordance with the terms of any agreements between Receiving Party and such third party.

Receiving Party agrees to provide all other information to Delivering Party in order for Delivering Party to make a commercially reasonable assessment of the extent to which the Deadline Shortfall was directly caused by its EEP Non-delivery.

In the event that the Deadline Shortfall is directly caused by the failure of a number of parties (including Delivering Party and Receiving Party), then Delivering Party's liability shall be to pay the EEP Payment in respect of its proportionate share of the Deadline Shortfall as determined by the parties in a commercially reasonable manner. In no circumstances shall Receiving Party seek to claim an EEP Payment from Delivering Party such that when aggregated with all the other claims made by Receiving Party to other parties in respect of its liability to make the EEP Payment and the liability caused by Receiving Party's own action or inaction, it is more than Receiving Party's liability to make the EEP Payment.

If Delivering Party disputes in good faith the amount of the EEP Payment claimed by Receiving Party, Delivering Party shall so notify Receiving Party stating the reasons for the dispute and the obligation to pay the EEP Payment shall be suspended until such dispute is resolved. The parties shall seek to settle the dispute regarding the EEP Payment as soon as reasonably possible.

Once the amount of the EEP Payment is agreed or any dispute in relation thereto resolved, Delivering Party shall pay such determined EEP Payment to Receiving Party within two (2) Business Days against Receiving Party's VAT Invoice [or GST Invoice] in respect thereof.

(xii) Specified Holding Accounts and Modifications of Party's Specified Holding Accounts

Each party agrees with the other, so long as either party has or may have any obligation under an Emissions Allowance Transaction, as follows:

- (1) In respect of Receiving Party:
 - (A) Receiving Party shall ensure that one or more of such Holding Accounts registered in accordance with Part 7 (d)(vi)(*Requirements under the Scheme*) above are specified in the Annex to this Part [7] or in the relevant Confirmation; and
 - (B) Receiving Party may from time to time (a) amend the order in which its Specified Holding Accounts are listed, (b) nominate an additional Specified Holding Account to those listed, and/or (c) remove a Specified Holding Account from those listed, in each case in respect of an Emissions Allowance Transaction, provided that it notifies Delivering Party in writing of such amendment, addition and/or removal (including the provision of the relevant account details) no less than thirty (30) calendar days prior to the next Delivery Date under that Emissions Allowance Transaction, and provided further that in each such case, Delivering Party notifies Receiving Party in writing that it consents to such changes within five (5) Delivery Business Days of receiving such notice from Receiving Party;
- (2) In respect of Delivering Party:
 - (A) Delivering Party may specify one or more of such Holding Accounts registered in accordance with Part 7 (d)(vi)(*Requirements under the Scheme*) above in the Annex to this Part [7] or in the relevant Confirmation; and

- (B) Delivering Party may from time to time, add a new Holding Account or an additional Holding Account to those listed in the Annex to this Part [7] or in the relevant Confirmation provided that it notifies Receiving Party in writing of such addition (including the relevant account details) on or before the day that is ten (10) Delivery Business Days before the next Delivery Date under that Emissions Allowance Transaction.

(e) **Defined Terms and Interpretation**

Terms used in this Part [7] and not otherwise defined, will have the meanings specified below:

Abandonment of Scheme²⁶ In respect of an Emissions Allowance Transaction means that after the Trade Date:

- (a) if the relevant Scheme is Australian:
- (i) the Scheme is amended, discontinued or terminated; and
 - (ii) as a result the transferral of Allowances in accordance with the Scheme has been or will be made impossible as at the Delivery Date; or²⁷
- (b) if the relevant Scheme is European, the Scheme is as a result of official written public pronouncement by the European Community, no longer scheduled to proceed or is to be discontinued.

Administrator Event: Means, the suspension of some or all of the processes of a Relevant Registry or (unless, if the Scheme is Australian, the Allowances are Australian Allowances or Australian Credits) the EUTL in accordance with the Registries Regulation by the relevant National Administrator or the Central Administrator (as applicable) (i) where that Relevant Registry is not operated and maintained in accordance with the provisions of the Clean Energy Act or the Registries Regulation (as applicable), or any other applicable law, or (ii) for the purpose of carrying out scheduled or emergency maintenance, or (iii) where there has

²⁶ *Australian explanatory note:* It is necessary for the parties using this Part [7] to determine in each case the suitability or otherwise of this definition of Abandonment of Scheme to the particular circumstances applicable to that case. This definition of Abandonment of Scheme is not intended to constitute a legal opinion or other professional advice on which users may rely in implementing actual transactions. Nor is it intended as a substitute for legal or other professional advice when documenting proposed transactions. In this regard, it is strongly recommended that intending users seek prior independent professional advice in respect of the implications arising from the use of this definition.

²⁷ *Australian explanatory note:* The implication for this provision needs to be carefully considered for each transaction. For example, an Abandonment of Scheme can occur under an Australian Scheme transaction in respect of Australian International Credits (which is also transferable under the European Scheme) even if the European Scheme is unaffected (unless European has been selected as a Fallback Scheme).

Also, due to the definition of “Scheme”, it could be possible that if a Fallback Scheme is not specified, the repeal of legislation may not result in an Abandonment of Scheme if the relevant Allowances are still able to be transferred under the Australian National Registry of Emissions Units. However, if the Parties wish Abandonment of Scheme to be triggered following a change to the Scheme which means the contracted Allowances cannot be surrendered (as opposed to transferred) under the Scheme, the Parties should replace this paragraph (a)(ii) with the following:

- “(ii) as a result the surrender of Allowances in accordance with the Scheme has been or will be made impossible as at the Delivery Date; or”

AFMA does not recommend including, or not including, this wording. AFMA suggests only that wording of this type might be considered by the parties if they want Abandonment of Scheme to be triggered following a change to the Scheme which means the contracted Allowances cannot be surrendered under the Scheme. However, parties need to take their own legal advice on its effect and suitability.

been or following reasonable suspicion of, a breach of security which threatens the integrity of the registries system (including any back up facilities).

AEUA or AEU Allowance: Means an "allowance" as defined in the Directive and which is issued under Chapter II thereof.

Affected Allowance: Means an Allowance which is or is alleged to have been the subject of an Unauthorised Transfer as confirmed by an Appropriate Source. An Australian Allowance or Australian Credit cannot be an Affected Allowance if the relevant Scheme is Australian.²⁸

Aircraft Operator: Means an "aircraft operator" as defined in the Directive.

Allowance: Means, in respect of an Emissions Allowance Transaction, an allowance of the specified Allowance Type relating to the Specified Compliance Period.

However, if the applicable Scheme is Australian (and unless the related Confirmation specifies otherwise) then²⁹:

- (a) if no Specified Compliance Period is specified in the related Confirmation then the "eligible financial year" (as defined in the Clean Energy Act) which ends in the calendar year which is immediately before the Reconciliation Deadline on or immediately following the Delivery Date is taken to be the Specified Compliance Period in respect of the Emissions Allowance Transaction; and
- (b) an Allowance will be of the Specified Compliance Period only if:
 - (i) it is an Australian Allowance, it is of the "vintage year" (as defined in the Clean Energy Act) which corresponds to the Specified Compliance Period, or an earlier "vintage year" (provided that such "vintage year" must not correspond with a "fixed charge year" under the Clean Energy Act); and
 - (ii) it is an Australian Credit or an Australian International Credit, it is eligible for surrender under the Australian Scheme in relation to the Specified Compliance Period.

Allowance Forward Transaction: Means an Emissions Allowance Transaction identified as an Allowance Forward Transaction in the related Confirmation.

Allowance Option Transaction: Means an Emissions Allowance Transaction identified as an Allowance Option Transaction in the related Confirmation. An Allowance Option Transaction shall be an Option Transaction for purposes of the 2006 ISDA Definitions.

²⁸

Australian explanatory note: This has been included because of the protections which exist in the Clean Energy Act.

²⁹

Australian explanatory note: These provisions provide for default Specified Compliance Periods for Australian Scheme Trades.

Allowances to be Delivered:	Means, in respect of an Emissions Allowance Transaction that is: (1) an Allowance Forward Transaction, a number of Allowances equal to the Number of Allowances; or (2) an Allowance Option Transaction and in respect of an Exercise Date, a number of Allowances equal to the number of Options exercised or deemed exercised on that Exercise Date multiplied by the Option Entitlement.
Allowance Purchase Price:	Means, in respect of an Emissions Allowance Transaction which is an Allowance Forward Transaction, the amount specified or otherwise determined as provided in the related Confirmation.
Allowance Shortfall:	Has the meaning given to such term in Part [7](d)(iii)(<i>Partial Settlement</i>).
Allowance Strike Price:	Means, in respect of an Emissions Allowance Transaction which is an Allowance Option Transaction, the price per Allowance specified or otherwise determined as provided in the related Confirmation.
Allowance Type:	In respect of an Emissions Allowance Transaction, means any of: <ul style="list-style-type: none"> (a) if the applicable Scheme is Australian, an Australian Allowance, an Australian Credit or an Australian International Credit as specified in the related Confirmation;³⁰ and (b) if the applicable Scheme is European, an AEU Allowance, an EU Allowance or an Eligible EU Credit as specified in the related Confirmation.
Appropriate Source:	Means any “competent authority” (as defined in the Registries Regulation) and/or the Central Administrator, National Administrator or any other authority having power pursuant to the Directive and/or the Registries Regulation to block, suspend, refuse, reject, cancel or otherwise affect the transfer (whether in whole or in part) of Allowances, any recognised law enforcement or tax authorities of a Member State, the European Anti-fraud Office of the European Commission or Europol.
Australian Allowance:	Means a “carbon unit” as defined in the Clean Energy Act including, unless otherwise specified in the related Confirmation, any unit included in a replacement definition under any amendment or re-enactment of the Clean Energy Act.
Australian Credit:	Means an “eligible Australian carbon credit unit” as defined in the Clean Energy Act including, unless otherwise specified in the related Confirmation, any unit included in a replacement definition under any amendment or re-enactment of the Clean

³⁰

Australian explanatory note: This means that Australian Scheme transactions may be in Australian carbon units, eligible Australian carbon credit units or eligible international units.

	Energy Act.
Australian International Credit:	Means an “eligible international emissions unit” as defined in the Clean Energy Act including, unless otherwise specified in the related Confirmation, any unit included in a replacement definition under any amendment or re-enactment of the Clean Energy Act.
Buyer:	Means, in respect of an Emissions Allowance Transaction, the party specified as such in the related Confirmation.
Buy-In:	Means the purchase of Allowances by Receiving Party in accordance with the procedures described in paragraph (b) of the definition of Receiving Party's Replacement Cost in this Part [7](e)(<i>Defined Terms and Interpretation</i>).
Buy-In Period:	Has the meaning given to such term in the definition of Receiving Party's Replacement Cost in this Part [7](e)(<i>Defined Terms and Interpretation</i>).
Calculation Agent:	Means, in respect of an Emissions Allowance Transaction, the party specified as such in the related Confirmation.
Call:	Means a type of an Allowance Option Transaction entitling, but not obligating, Buyer to purchase Allowances from Seller at the Allowance Strike Price per Allowance.
Central Administrator:	Means the person designated by the EU Commission to operate and maintain the EUTL pursuant to Article 20 of the Directive and Article 5 of the Registries Regulation.
Central European Time:	Means Central European Time, including Central European Winter Time and Central European Summer Time as applicable.
CER or Certified Emissions Reduction:	Means an Allowance Type having the meaning given to "Certified Emissions Reduction" under Article 12 of the Kyoto Protocol or any equivalent unit replacing CERs under the International Rules.
Clean Energy Act:	The Clean Energy Act 2011 (Cwlth) as amended from time to time, including any regulations or other instruments made under that Act or any successor or replacement legislation (including any remake or re-enactment of it).
Close-out Cost of Carry Amount:	Means an amount in the Specified Currency equal to: (a) the Close-out Cost of Carry Rate; multiplied by: (b)(i) in respect of an Allowance Forward Transaction, the Allowance Purchase Price; or (ii) in respect of an Allowance Option Transaction, the Allowance Strike Price; multiplied by: (c) the Close-out Cost of Carry Delay, divided by (d) the applicable Day Count Denominator.
Close-out Cost of Carry Delay:	Means the number of days in the period from (and including) the scheduled Payment Date to (but excluding) the date that would

be the Payment Date if delivery had been made on the Final Delivery Date or Final Compliance Date (as the case may be).

Close-out Cost of Carry Rate:

Means a rate equal to the Floating Rate that would be determined for the period from the scheduled Payment Date to the Early Termination Date, if the Reset Date were the date that would be the Payment Date if delivery had been made on the Final Delivery Date or Final Compliance Date (as the case may be) using the applicable Floating Rate Option.

COP/MOP:

Means a conference of the parties serving as the meeting of the parties to the Kyoto Protocol.

Cost of Carry Amount:

Means an amount in the Specified Currency equal to:

- (a) the Cost of Carry Rate multiplied by:
- (b) (i) in respect of an Allowance Forward Transaction, the Allowance Purchase Price multiplied by the Number of Allowances delivered on or before the Delayed Delivery Date following the occurrence of a Suspension Event; or

(ii) in respect of an Allowance Option Transaction, the Allowance Strike Price multiplied by the Number of Allowances delivered on or before the Delayed Delivery Date following the occurrence of a Suspension Event;

multiplied by:

- (c) the Cost of Carry Delay, divided by applicable Day Count Denominator.

Cost of Carry Delay:

Means the number of days in the period from (and including) the scheduled Payment Date to (but excluding) the Delayed Payment Date.

Cost of Carry Rate:

Means a rate equal to the Floating Rate that would be determined for a Calculation Period commencing on (and including) the scheduled Payment Date and ending on (but excluding) the Delayed Payment Date, if the Reset Date were the last day of that Calculation Period using the applicable Floating Rate Option.

Day Count Denominator:

In respect of an Emissions Allowance Transaction, the number of days specified in the relevant Confirmation. If none is specified it shall be (i) 360 where the Specified Currency is EUR, (ii) 365 where the Specified Currency is AUD and (iii) otherwise, the denominator of the Floating Rate Day Count Fraction which would be determined under Sections 6.2(f)(ii) or (iii) of the 2006 ISDA Definitions in respect of the Floating Rate Option.

Deadline Shortfall:

Has the meaning given to such term in Part [7](d)(xi)(Failure to

Deliver (Alternative Method) – EEP Applicable).

- Decision: Means a decision adopted by the COP/MOP, as amended or replaced from time to time.
- Delayed Delivery Date: Has the meaning given to that term in Part [7](d)(i)(5)(B)(*Effect of a Suspension Event*).
- Delayed Payment Date: Has the meaning given to that term in the definition of Payment Date in this [7](e)(*Defined Terms and Interpretation*).
- Delivering Party: Means, in respect of an Emissions Allowance Transaction that is: (1) an Allowance Forward Transaction, the Seller; (2) an Allowance Option Transaction which is a Call, the Seller; or (3) an Allowance Option Transaction which is a Put, the Buyer.
- Delivering Party's Delivery Business Day Location: Means, in respect of an Emissions Allowance Transaction, the place specified as such in the Confirmation for the relevant Emissions Allowance Transaction or, if a place is not so specified: (i) the place specified in the Annex to this Part [7] as the Delivery Business Day Location for Delivering Party; or (ii) if no such place is specified, the place in which Seller's address for purposes of receiving notices connected with the relevant EU Emissions Allowance Transaction is located; or (iii) if no such address has been given, the place in which Delivering Party has its registered office.
- Delivering Party's Replacement Cost: Means in respect of a failure of Receiving Party to accept delivery of a number of Allowances (the "**DPRC Shortfall**"), an amount equal to:
- (a) (i) the Allowance Purchase Price or Allowance Strike Price, as applicable, as set out in the Confirmation for the relevant Emissions Allowance Transaction plus, in those circumstances in which the relevant termination of the parties' obligations under "Physical Settlement" occurs following a Suspension Event, the Close-out Cost of Carry Amount; less
 - (ii) the price (per Allowance) Delivering Party, acting in a commercially reasonable manner, does or would, in the determination of the Calculation Agent, receive in an arm's length transaction concluded on the Final Compliance Date for an equivalent number of Allowances of the relevant Allowance Type to be delivered on the Final Compliance Date or, if later, the Delivery Business Day on which Allowances would be delivered in accordance with prevailing market practice under a spot transaction concluded on the Final Compliance Date; multiplied by:
 - (b) the DPRC Shortfall; plus
 - (c) interest at the Default Rate for the period from (and

including) the Delivery Date to (but excluding) the date of termination in accordance with Part [7](d)(ii)(2)(B)(*Failure to Comply Not Remedied*) on an amount equal to the product of the DPRC Shortfall and an amount equal to the excess, if any, of the Allowance Purchase Price or Allowance Strike Price, as applicable, over the price determined pursuant to paragraph (a)(ii) above.

- Delivery Business Day: Means, in respect of an Emissions Allowance Transaction, any day, which is not a Saturday or Sunday, on which commercial banks are open for general business in both Delivering Party's Delivery Business Day Location and the Receiving Party's Delivery Business Day Location.
- Delivery Date: Means, in respect of an Emissions Allowance Transaction, the date or dates specified as such in the related Confirmation (subject to any adjustment in accordance with Part [7](d)(i)(5)(*Suspension Event*)).
- Directive: Means Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, as amended from time to time.
- DPRC Shortfall: Has the meaning given to such term in the definition of Delivering Party's Replacement Cost in this Part [7](e)(*Defined Terms and Interpretation*).
- EEP Amount: Means an amount (expressed as an amount per Allowance) that Receiving Party determines, acting in good faith and using commercially reasonable procedures, to be its total losses and costs which result from Delivering Party's failure to deliver the Shortfall to the extent that those losses and costs are not reflected elsewhere in the definition of Receiving Party's Replacement Cost and to the extent that those losses and costs relate to:
- (a) any Excess Emission Penalty which Receiving Party must pay to the Relevant Authority in accordance with the terms of the Scheme; and/or
 - (b) if "EEP Equivalent" is specified to be applicable in the Annex to this Part [7] or the Confirmation for the relevant Emissions Allowance Transaction, any amount which Receiving Party must pay to a third party in respect of any such penalty payable to any other party (including a Relevant Authority) by that third party as a result of Delivering Party's failure to deliver the Shortfall.
- EEP Non-delivery: Has the meaning given to such term in Part [7](d)(xi)(*Failure to Deliver (Alternative Method) – EEP Applicable*).

EEP Payment:	Has the meaning given to such term in Part [7](d)(xi)(<i>Failure to Deliver (Alternative Method) – EEP Applicable</i>).
EEP Risk Period:	Means, in respect of an Emissions Allowance Transaction and any Delivery Date, a period of time prior to the first succeeding Reconciliation Deadline, as specified in the related Confirmation.
Eligible EU Credit:	Means a CER or ERU that, on the Delivery Date: <ul style="list-style-type: none"> (a) pursuant to the Directive, may be exchanged by an Operator for an EU Allowance (valid in the Third Compliance Period) on a one-for-one basis, or used to comply with a requirement to surrender allowances in the Third Compliance Period on an equivalent one-to-one basis as an EU Allowance; and (b) has not previously been surrendered or otherwise used for compliance purposes by an Operator or Aircraft Operator in accordance with the Directive.
Encumbrance Loss Amount:	An amount reasonably determined by Receiving Party in good faith to be its total losses and costs in connection with an Emissions Allowance Transaction including, but not limited to, any loss of bargain, cost of funding or, at the election of Receiving Party but without duplication, loss or costs incurred as a result of its terminating, liquidating, obtaining or re-establishing any hedge or related trading position. Such amount includes losses and costs in respect of any payment already made under an Emissions Allowance Transaction prior to the delivery of the written notice by Receiving Party and Receiving Party's legal fees and out-of-pocket expenses but does not include Excess Emissions Penalty or any amount which Receiving Party must pay to a third party in respect of any such penalty payable to any other party (or Relevant Authority) by that third party. The parties agree that in circumstances where there was a breach of the No Encumbrances Obligation by Delivering Party caused by the transfer of an Affected Allowance, Receiving Party shall be entitled to include in such amount any losses arising out of or in connection with any claim, demand, action or proceeding brought against Receiving Party by a third party consequent upon the transfer by Receiving Party of an Affected Allowance transferred to it by Delivering Party under an Emissions Allowance Transaction.
End of Phase Reconciliation Deadline:	Means, in respect of an Emissions Allowance Transaction where the relevant Scheme is European, the Reconciliation Deadline scheduled to fall in April 2021.
ERU or Emissions Reduction Unit:	Means an Allowance Type having the meaning given to "Emissions Reduction Unit" under Article 6 of the Kyoto Protocol or any equivalent unit replacing ERUs under the

International Rules .

EU:	Means the European Community as it exists from time to time.
EU Allowance:	Means an "allowance" as defined in the Directive that has been issued by a competent authority pursuant to Chapter III of the Directive.
EUTL or European Transaction Log:	Means the independent transaction log provided for in Article 20(1) of the Directive, the operation of which is further detailed in Article 5 of the Registries Regulation.
Excess Emissions Penalty/EEP:	<p>In respect of an Emissions Allowance Transaction:</p> <ul style="list-style-type: none">(a) if the relevant Scheme is Australian, means a payment required to be made as a "unit shortfall charge" as defined the Clean Energy Act; and(b) if the relevant Scheme is European, has the meaning given to it in the Directive.
Executive Board:	Means the Executive Board of the Clean Development Mechanism that is referred to in Article 12(4) of the Kyoto Protocol, and as constituted under the International Rules.
Expiration Date:	Means, in respect of an Emissions Allowance Transaction which is an Allowance Option Transaction, the date specified as such in the related Confirmation (or determined pursuant to a method specified for such purpose) or, if that date is not a Business Day, the next following day that is a Business Day.
Fallback Scheme:	In respect of an Emissions Allowance Transaction, the scheme specified as such in the related Confirmation.
Final Compliance Date:	Means, the date that is the second Delivery Business Day after notice is given under Part [7](d)(ii)(2)(<i>Failure to Comply by Receiving Party</i>) requiring Receiving Party to comply with Part [7](d)(vi)(<i>Requirements under the Scheme</i>) or, if earlier, the Reconciliation Deadline on or immediately following the relevant Delivery Date.
Final Delivery Date:	Means, the date that is the second Delivery Business Day after notice is given under Part [7](d)(ii)(1)(<i>Failure to Deliver by Delivering Party</i>) requiring Delivering Party to remedy a failure to deliver or, if earlier, the Reconciliation Deadline on or immediately following the relevant Delivery Date.
Floating Rate Option:	In respect of an Emissions Allowance Transaction the Floating Rate Option specified in the relevant Confirmation. If none is specified, then it is to be (i) "EUR-EONIA-OIS-COMPOUND," if the Specified Currency is EUR, (ii) "AUD-AONIA-OIS-COMPOUND," if the Specified Currency is AUD, and (iii) if the Specified Currency is neither EUR nor AUD, a rate determined by the Calculation Agent.

GHG:	Means any of the six gases listed in Annex A to the Kyoto Protocol, and such other gases as may be included in the Kyoto Protocol from time to time.
GHG Reductions:	Means the removal, limitation, reduction, avoidance, sequestration or mitigation of GHG emissions relative to the scenario that reasonably represents the anthropogenic emissions by sources or anthropogenic removal by sinks of GHG in the absence of such removal, limitation, reduction, avoidance, sequestration or mitigation.
Holding Account:	In respect of a party and an Emissions Allowance Transaction, (i) the accounts specified as such in the Confirmation for the relevant Emissions Allowance Transaction; or (ii) where no such accounts are specified in accordance with (i), in the Annex to this Part [7]; in either case as supplemented by agreement or notice (as applicable) in accordance with Part [7](d)(xii) (“Specified Holding Accounts and Modifications of Party’s Specified Holding Accounts”). With respect to accounts so specified, a Holding Account means a form of digital record maintained in a Registry (pursuant to and in accordance with the Registries Regulation) that is able to be used to record the allocation (if applicable), holding and transfer of Allowances of the Allowance Type that is to be delivered under the relevant Emissions Allowance Transaction pursuant to and in accordance with the Scheme and/or the relevant International Rules.
Indemnifiable EEP:	Has the meaning given to such term in Part [7](d)(xi)(<i>Failure to Deliver (Alternative Method) – EEP Applicable</i>).
International Emissions Trading or IET:	Means the mechanism referred to in Article 17 of the Kyoto Protocol.
International Rules:	Means, as applicable, all laws, regulations, rules, guidelines, directions, modalities and procedures pertaining to IET as stipulated in the UNFCCC, the Kyoto Protocol, the Directive, the Registries Regulation, all decisions of the COP/MOP, public records of the Executive Board and all findings and rulings of all subsidiary bodies and technical panels pursuant to the Kyoto Protocol.
ITL or International Transaction Log:	Meant the international transaction log established pursuant to paragraph 38 of the Annex to Decision 13/CMP.1.
Kyoto Protocol:	Means the Kyoto Protocol to the United Nations Framework Convention on Climate Change adopted at the third Conference of the Parties and signed in Kyoto, Japan on December 11, 1997, as amended from time to time.
Long-Stop Date:	Means, if the relevant Scheme is European, in respect of a Suspension Event that occurs with respect to a delivery or acceptance obligation that would otherwise be required to be

performed within the period:

- (a) from (and including) 1 May 2013 to (and including) 31 December 2014, 1 June 2016;
- (b) from (and including) 1 January 2015 to (and including) 31 December 2016, 1 June 2018;
- (c) from (and including) 1 January 2017 to (and including) 31 December 2018, 1 June 2020; and
- (d) from (and including) 1 January 2019 to (and including) the twenty-fifth (25th) calendar day of the month in which the End of Phase Reconciliation Deadline is scheduled to occur, the twenty-fifth (25th) calendar day of the month in which the End of Phase Reconciliation Deadline is scheduled to occur.

If the relevant Scheme is Australian, then the Long-Stop Date is the date which is the fifth (5th) calendar day before the next Reconciliation Deadline which follows the end of the Specified Compliance Period applicable to the relevant Transaction.

Member State:

Means any one of the signatories of the European Union from time to time.

Multiple Exercise:

Means:

- (a) If "Multiple Exercise" is specified to be applicable to an Emissions Allowance Transaction which is an American Allowance Option Transaction or a Bermuda Allowance Option Transaction, Buyer may exercise all or less than all the unexercised Options on one or more Business Days during the Exercise Period but (except as set forth below) on any such Business Day may not exercise less than the Minimum Number of Options or more than the Maximum Number of Options and, if a number is specified as "Integral Multiple" in the related Confirmation, the number of exercised Options must be equal to, or be an integral multiple of, the number so specified. Except as set forth below, any attempt to exercise on any such Business Day:
 - (A) more than the Maximum Number of Options will be deemed to be an exercise of the Maximum Number of Options (the number of Options exceeding the Maximum Number of Options being deemed to remain unexercised);
 - (B) less than the Minimum Number of Options will be ineffective; and
 - (C) an amount of Options not equal to or an integral multiple of the Integral Multiple will be deemed to

be an exercise of a number of Options equal to the next lowest integral multiple of the Integral Multiple (the number of Options exceeding that number being deemed to remain unexercised).

- (b) Notwithstanding the foregoing, on any such Business Day, Buyer may exercise any number of Options that does not exceed the Maximum Number of Options if it exercises all the Options remaining unexercised. On the Expiration Date, Buyer may exercise any number of Options remaining unexercised.
- (c) "Minimum Number of Options" means, in respect of an Allowance Option Transaction to which Multiple Exercise is applicable, the number specified as such in the related Confirmation.
- (d) "Maximum Number of Options" means, in respect of an Allowance Option Transaction to which Multiple Exercise is applicable, the number specified as such in the related Confirmation.

National Administrator: Means the entity responsible for managing, on behalf of a Member State, a set of user accounts under the jurisdiction of a Member State in the Union Registry as designated in accordance with Article 7 of the Registries Regulation.

No Encumbrance Obligation: Has the meaning given to such term in Part [7](d)(vii)(*No Encumbrances*).

Notice of Exercise: Means, in respect of an Emissions Allowance Transaction which is an Allowance Option Transaction, an Option notice given by Buyer to Seller (which may be given orally (including by telephone) unless the parties specify otherwise in the related Confirmation) of its exercise of the right or rights granted pursuant to the Allowance Option Transaction during the hours specified in the relevant Confirmation on a Seller Business Day during the Exercise Period, which shall be irrevocable once effective. If the Notice of Exercise is received on any Seller Business Day after the latest time so specified, the Notice of Exercise will be deemed to have been received on the next following Seller Business Day, if any, in the Exercise Period. Buyer may exercise the right or rights granted pursuant to the Allowance Option Transaction only by giving a Notice of Exercise.

Number of Allowances: Means, in respect of an Emissions Allowance Transaction, the number specified as such in the related Confirmation.

Number of Options: Means, in respect of an Emissions Allowance Transaction which is an Allowance Option Transaction, the number specified as such in the related Confirmation, being the number of Options comprised in the relevant Allowance Option Transaction.

Operator:	Means an "operator" as defined in the Directive.
Option:	Means, in respect of an Allowance Option Transaction, each unit into which the Option Transaction is divided for purposes of exercise or settlement.
Option Entitlement:	Means, in respect of an Emissions Allowance Transaction which is an Allowance Option Transaction, the number of Allowances per Option specified as such in the related Confirmation. In the event that no Option Entitlement is specified in the related Confirmation, the Option Entitlement in respect of any Allowance Option Transaction shall be one Allowance per Option.
Original Affected Party:	Means the person from whose account the Unauthorised Transfer of the Affected Allowance occurred.
Payment Date:	Means, in respect of an Emissions Allowance Transaction, the date specified as such or otherwise determined pursuant to a method specified in the related Confirmation, provided that, in the case of delayed delivery pursuant to Part [7](d)(i)(5)(<i>Suspension Event</i>), the Payment Date shall be determined accordingly from the Delayed Delivery Date (such Payment Date being the " Delayed Payment Date ").
Potential Exercise Date:	Means, in respect of an Emissions Allowance Transaction which is a Bermuda Allowance Option Transaction, each date specified as such in the related Confirmation or, if that date is not a Business Day, the next following day that is a Business Day.
Premium:	Means, in respect of an Emissions Allowance Transaction which is an Allowance Option Transaction, the amount specified or otherwise determined as provided in the related Confirmation. If a Premium per Allowance is specified in the related Confirmation, the Premium shall be the product of the Premium per Allowance, the Number of Options and the Option Entitlement.
Put:	Means a type of Allowance Option Transaction entitling, but not obligating, the Buyer to sell Allowances to Seller at the Allowance Strike Price per Allowance.
Receiving Party:	Means, in respect of an Emissions Allowance Transaction that is: (1) an Allowance Forward Transaction, the Buyer; (2) an Allowance Option Transaction which is a Call, the Buyer; or (3) an Allowance Option Transaction which is a Put, the Seller.
Receiving Party's Delivery Business Day Location:	Means, in respect of an Emissions Allowance Transaction, the place specified as such in the Confirmation for the relevant Emissions Allowance Transaction or, if a place is not so specified: (i) the place specified in the Annex to this Part [7] as the Delivery Business Day Location for Receiving Party; or (ii) if no such place is specified, the place in which Receiving

Party's address for purposes of receiving notices connected with the relevant Emissions Allowance Transaction is located; or (iii) if no such address has been given, the place in which Receiving Party has its registered office.

Receiving Party's
Replacement Cost

Means:

- (a) if "Excess Emissions Penalty" is not specified to be applicable in the Annex to this Part [7] or the Confirmation for the relevant Emissions Allowance Transaction, or if "Excess Emissions Penalty" is specified to be applicable and if an EEP Risk Period is specified in the Annex to this Part [7] or in the Confirmation for the relevant Emissions Allowance Transaction but the Delivery Date falls outside the EEP Risk Period then, in respect of a failure to deliver a number of Allowances (the "**RPRC Shortfall**"), an amount equal to:
 - (i) (A) the price (per Allowance) that Receiving Party, acting in a commercially reasonable manner, does or would, in the determination of the Calculation Agent, pay in an arm's length transaction concluded on the Final Delivery Date for an equivalent number of Allowances to be delivered on the Final Delivery Date or, if later, the Delivery Business Day on which Allowances would be delivered in accordance with prevailing market practice under a spot transaction concluded on the Final Delivery Date; less
 - (B) the Allowance Purchase Price or Allowance Strike Price, as applicable, as set out in the Confirmation for the relevant Emissions Allowance Transaction plus, in those circumstances in which the relevant termination of the parties' obligations under "Physical Settlement" occurs following a Suspension Event, the Close-out Cost of Carry Amount; multiplied by:
 - (ii) the RPRC Shortfall; plus
 - (iii) interest at the Default Rate for the period from (and including) the Delivery Date to (but excluding) the date of termination in accordance with Part [7](d)(ii)(1)(B)(*Failure to Deliver Not Remedied*) on an amount equal to the product of the RPRC Shortfall and an amount equal to the excess, if any, of the price determined pursuant to paragraph (a)(i)(A) above over the Allowance Purchase Price or the Allowance Strike Price, as applicable; or
- (b) if "Excess Emissions Penalty" is specified to be

applicable in the Annex to this Part [7] or the Confirmation for an Emissions Allowance Transaction and, if an EEP Risk Period is specified in the Annex to this Part [7] or in the Confirmation for the relevant Emissions Allowance Transaction, the Delivery Date falls within the EEP Risk Period for the relevant Emissions Allowance Transaction, then, in respect of a failure to deliver a number of Allowances (the "**Undelivered Allowances**"), an amount equal to the sum of:

(i) either:

(A) if in one or more arm's length transactions Receiving Party is able, using its reasonable endeavours, to purchase a number of Allowances to be delivered during the period from (but excluding) the Final Delivery Date to (and including) the Reconciliation Deadline on or immediately following the Delivery Date (the "**Buy-In Period**"), which in respect of each such individual purchase of Allowances, when aggregated with other such purchases, amounts to a purchase of a number of Allowances equal to the number of Undelivered Allowances:

(X) (1) the price (per Allowance) at which Receiving Party is able so to purchase the relevant number of Allowances; less (2) (A) the Allowance Purchase Price or Allowance Strike Price, as applicable, for the Undelivered Allowances set out in the relevant Confirmation plus, (B) in those circumstances in which the relevant termination of the parties' obligations under "Physical Settlement" occurs following a Suspension Event, the Close-out Cost of Carry Amount; multiplied by:

(Y) the number of Allowances to which such purchase relates; plus

(Z) interest at the Default Rate for the period from (and including) the Delivery Date to (but excluding) the date of termination in accordance with Part [7](d)(ii)(1)(B)(*Failure to Deliver Not Remedied*) on an amount equal to the product of the number of Undelivered Allowances and an amount equal to the excess, if any, of the price determined pursuant to paragraph (b)(i)(A)(X)(1) above over the Allowance Purchase Price or Allowance Strike Price, as applicable; or

(B) if in one or more arm's length transactions Receiving Party, using its reasonable efforts, is unable to purchase a number of Allowances

equivalent to the Undelivered Allowances to be delivered during the Buy-In Period:

(X) in respect of the number of Allowances for which Receiving Party is able to effect a Buy-In during the Buy-In Period, an amount for such Allowances calculated in accordance with paragraph (A) above; and

(Y) in respect of a number of Allowances equal to the number of Undelivered Allowances minus the number of Allowances referred to in (B)(X) above (the "**Shortfall**"), the sum of:

(aa) (I) the price (per Allowance) at which Receiving Party, using its reasonable efforts and in an arm's length transaction, is able to purchase as soon as reasonably possible for delivery after the Reconciliation Deadline a number of Allowances (such Allowances also being of the same Allowance Type equal to the Shortfall; less

(II) the Allowance Purchase Price or Allowance Strike Price, as applicable, for the Undelivered Allowances set out in the relevant Confirmation plus, in those circumstances in which the relevant termination of the parties' obligations under "Physical Settlement" occurs following a Suspension Event, the Close-out Cost of Carry Amount; plus

(III) the EEP Amount; multiplied by:

(bb) the Shortfall; plus

(cc) interest at the Default Rate for the period from (and including) the Delivery Date to (but excluding) the date Receiving Party is or would be able to purchase Allowances in accordance with paragraph (B)(Y)(aa)(I) above on an amount equal to the product of the number of Undelivered Allowances and an amount equal to the excess, if any, of the price determined pursuant to paragraph (B)(Y)(aa)(I) above over the Allowance Purchase Price or the Allowance Strike Price, as applicable; and

provided that if the relevant Scheme is Australian then the amount for (aa)(I) and (II) is zero.³¹

- (ii) such reasonable costs and expenses which Receiving Party incurs as a direct result of Delivering Party's failure to deliver the Shortfall to the extent that those costs and expenses are not reflected in paragraphs (i)(A) or (i)(B) above.
- (c) if "Failure to Deliver (Alternative Method)" is specified to be applicable in the Annex to this Part [7] or the Confirmation for an EU Emissions Allowance Transaction, then, in respect of a failure to deliver a number of Allowances (the number of Allowances not so delivered being the "**RPRC Shortfall**"), an amount equal to:
 - (i) (A) the price (per Allowance) Receiving Party, acting in a commercially reasonable manner, does or would, in the determination of the Calculation Agent, pay in an arm's length transaction concluded in accordance with prevailing market practice on the Final Delivery Date to purchase a number of Allowances equivalent to the RPRC Shortfall for delivery on the first Delivery Business Day on which transactions concluded on the Delivery Date would be settled in accordance with prevailing market practice; less
 - (B) the Allowance Purchase Price or Allowance Strike Price, as applicable, as set out in the Confirmation for such EU Emissions Allowance Transaction plus, in those circumstances in which the relevant termination of the parties' obligations under "Physical Settlement" occurs following a Suspension Event, the Close-out Cost of Carry Amount; multiplied by:
 - (ii) the RPRC Shortfall; plus
 - (iii) interest at the Default Rate for the period from (and including) the Delivery Date to (but excluding) the Final Delivery Date on an amount equal to the product of the Allowance Purchase Price or the Allowance Strike Price, as applicable, and the RPRC Shortfall.

Reconciliation Deadline:

In respect of an Emission Allowance Transaction:

- (a) if the relevant Scheme is Australian, 1 February in each year from and including 1 February 2017³²; and

³¹

Australian explanatory note: This is because there is no "make-whole" obligation under the Australian Scheme.

³²

Australian explanatory note: This document is not intended to contemplate fixed charge years under the Clean Energy Act. See footnote [4].

- (b) if the relevant Scheme is European, 30th April in each calendar year in respect of the preceding calendar year,

or, in each case, such later date in each year as may be determined in accordance with the Scheme for the surrender of Allowances pursuant to the Scheme.

Registries Regulation: Means the EU Commission Regulation no. 1193/2011 of 18 November 2011 establishing a Union Registry for the period commencing on 1 January 2013, and subsequent trading periods, of the Scheme pursuant to the Directive 2003/87/EC and Decision 280/2004/EC of the European Parliament and of the Council and amending Regulations (EC) No. 2216/2004 and (EU) No. 920/2010.

Registry: Means the registry established by the Australian government (or the Clean Energy Regulator), a Member State, a non-Member State or the EU, in accordance with the International Rules, in order to ensure the accurate accounting of the issue, holding, transfer, acquisition, surrender, cancellation and replacement of Allowances. For the avoidance of doubt, references to a Registry shall include the Union Registry and the Holding Accounts within the Union Registry that are under the jurisdiction of a single National Administrator designated by a Member State and will together be deemed, for the purpose of this Part [7], to be a Registry for that Member State.

Registry Operation: Means, other than by reason of the occurrence of an Administrator Event:

- (a) the establishment of and continuing functioning of the Relevant Registry;
- (b) the establishment of and continuing functioning of the EUTL and the ITL; and/or
- (c) the establishment of and continuing functioning of the link between each of the Relevant Registry, the EUTL and the ITL, as applicable.

Relevant Authority: In respect of an Emissions Allowance Transaction:

- (a) if the relevant Scheme is Australian, means the Clean Energy Regulator or any other authority having power pursuant to the Clean Energy Act to block, suspend, refuse, reject, cancel or otherwise affect the transfer (whether in whole or in part) of Allowances; or
- (b) if the relevant Scheme is European, means any authority having power pursuant to the Directive and/or the Registries Regulation to administer the Scheme, including the Central Administrator and each National Administrator as those terms are defined in the Registries Regulation.

Relevant Registry:	Means the Registry through which a party is obliged to perform a delivery or acceptance obligation under and in accordance with an Emissions Allowance Transaction. Where a party has specified more than one Specified Holding Account for delivery or acceptance purposes, the Relevant Registry shall be identified in accordance with Part [7](d)(i)(2)(C).
RPRC Shortfall:	Has the meaning given to such term in the definition of Receiving Party's Replacement Cost in this Part [7](e)(<i>Defined Terms and Interpretation</i>).
Scheme:	<p>In respect of an Emissions Allowance Transaction, the scheme specified as such in the related Confirmation.</p> <p>If “Australian” is specified, the relevant scheme is the scheme for transferring allowances established pursuant to the Clean Energy Act.³³</p> <p>If “European” is specified, the relevant scheme is the scheme for transferring Allowances established pursuant to the Directive and the Registries Regulation, and as implemented by the national laws of Member States.³⁴</p> <p>If an Abandonment of Scheme occurs in relation to the Scheme for the Emissions Allowance Transaction and a Fallback Scheme is specified in the related Confirmation, then from the time that the Abandonment of Scheme occurs, the Fallback Scheme will be taken to be the relevant Scheme for the Emissions Allowance Transaction.</p>
Scheme Time:	In respect of an Emissions Allowance Transaction, Sydney Time ³⁵ if the relevant Scheme is Australian or Central European Time if the relevant Scheme is European.
Second Compliance Period:	Means, if the relevant Scheme is European, with respect to EU Allowances and AEU Allowances, the period beginning 1 January 2008 to 31 December 2012 and, with respect to CERs and ERUs, the first commitment period under the Kyoto Protocol referencing the period in which the GHG Reductions, which are the subject of the relevant CERs or ERUs, were achieved.
Seller:	Means, in respect of an Emissions Allowance Transaction, the party specified as such in the related Confirmation.

³³ *Australian explanatory note:* If the Parties wish Abandonment of Scheme to be triggered following a change to the Scheme which means the contracted Allowances cannot be surrendered under the Scheme, the Parties should replace this sentence with the following:

“If “Australian” is specified, the relevant scheme is the scheme for surrendering allowances established pursuant to the Clean Energy Act.”

AFMA does not recommend including, or not including, this wording. AFMA suggests only that wording of this type might be considered by the parties if they want Abandonment of Scheme to be triggered following a change to the Scheme which means the contracted Allowances cannot be surrendered under the Scheme. However, parties need to take their own legal advice on its effect and suitability.

³⁴ *Australian explanatory note:* This document contemplates the Australian and the European Scheme only.

³⁵ *Australian explanatory note:* A different time could be agreed between the parties.

Seller Business Day:	Means, in respect of an Emissions Allowance Transaction which is an Allowance Option Transaction, any day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) in the city in which Seller is located for purposes of receiving notices.
Settlement Disruption Event:	Means an event or circumstance beyond the control of the party affected that cannot, after the use of all reasonable efforts, be overcome and which makes it impossible for that party to perform its obligations either to deliver or to accept Allowances in accordance with the terms of an Emissions Allowance Transaction.
	For the avoidance of doubt, the inability of a party to deliver Allowances as a result of insufficient Allowances in the relevant Specified Holding Account, whether caused by the low or non-allocation of Allowances by the Australian government (or the Clean Energy Regulator) a Member State or any other state, the delay or failure of a Member State or Central Administrator to replace allowances of the Second Compliance Period with Allowances for the Third Compliance Period, or the failure of a party to procure sufficient Allowances to meet its delivery obligations, shall not constitute a Settlement Disruption Event. This is not an exhaustive list of events which will not constitute a Settlement Disruption Event and is provided for the avoidance of doubt only.
	If an event or circumstance which would otherwise constitute or give rise to a Settlement Disruption Event also constitutes a Suspension Event or Abandonment of Scheme, it will be treated as a Suspension Event or Abandonment of Scheme, respectively and will not constitute a Settlement Disruption Event.
Shortfall:	Has the meaning given to such term in the definition of Receiving Party's Replacement Cost in this Part [7](e)(<i>Defined Terms and Interpretation</i>).
Specified Compliance Period:	In respect of an Allowance and an Emissions Allowance Transaction: <ul style="list-style-type: none"> (a) if the relevant Scheme is Australian, the “eligible financial year” (as defined in the Clean Energy Act) as specified in the related Confirmation;³⁶ or (b) if the relevant Scheme is European, the period as specified in the Confirmation for the relevant Emissions Allowance Transaction.
Specified Currency:	In respect of an Emissions Allowance Transaction, the currency specified as such in the relevant Confirmation or, if none is specified the currency in which the Allowance Purchase Price is denominated.

³⁶ *Australian explanatory note:* This is to correspond to the vintage year.

Specified Holding Account:	Means, in respect of a party and an Emissions Allowance Transaction, the Holding Accounts (if any) specified as such in respect of such party (i) in the Confirmation for the relevant Emissions Allowance Transaction; or (ii) where no such accounts are specified in accordance with (i), in the Annex to this Part [7]; in either case in accordance with Part [7](d)(xii)(1)(A) or Part [7](d)(xii)(2)(A) (as applicable) and subject to modification in accordance with Part [7](d)(xii)(1)(B) and Part [7](d)(xii)(2)(B).
Suspension Event:	Means any date a party to the Agreement is unable to perform its delivery or acceptance obligations under and in accordance with an Emissions Allowance Transaction and the Scheme through a Relevant Registry as a result of the occurrence of any of the following events: <ul style="list-style-type: none"> (i) absence of Registry Operation; or (ii) the occurrence of an Administrator Event.
Trade Date:	Means, in respect of an Emissions Allowance Transaction, the date specified in the related Confirmation.
Third Compliance Period:	Means, if the relevant Scheme is European, in respect of EU Allowances and AEU Allowances, the period referred to in Article 16 of the Directive 2009/29/EC starting 1 January 2013 to 31 December 2020 and with respect to Eligible EU Credits, the period immediately following the first commitment period under the Kyoto Protocol referencing the period in which the GHG Reductions, which are the subject of the relevant CERs or ERUs, were achieved.
Unauthorised Transfer:	Means the transfer by debiting of any Allowance from an account holder's Holding Account and the crediting of a Holding Account of another person, where such transfer is not initiated by the relevant authorised representative or additional authorised representative (as referred to in the Registries Regulation) of the first account holder.
Undelivered Allowances:	Has the meaning given to such term in the definition of Receiving Party's Replacement Cost in this Part [7](e)(<i>Defined Terms and Interpretation</i>).
UNFCCC:	Means the United Nations Framework Convention on Climate Change.
Union Registry:	Means the Registry referred to as the "Community Registry" in Article 19(1) of the Directive.
[VAT:	Has the meaning given to such term in Part [7](d)(viii)(<i>Value Added Taxes</i>).
VAT Amount:	Has the meaning given to such term in Part [7](d)(viii)(<i>Value</i>

Added Taxes).

- VAT Invoice: Has the meaning given to such term in Part [7](d)(v)(*Invoicing*).
- VAT Jurisdiction: Means, in respect of a party and an Emissions Allowance Transaction, the place specified as such in the related Confirmation or, if a place is not so specified, the place specified in the Annex to this Part [7] as the VAT Jurisdiction for such party.]³⁷
- Written Confirmation: Means, in respect of a party and an Emissions Allowance Transaction which is an Allowance Option Transaction, if "Written Confirmation" is specified to be applicable or if demanded by Seller (which demand, notwithstanding any provisions regarding notice applicable to the Allowance Option Transaction, may be given orally (including by telephone)), Buyer shall execute a written confirmation (including by facsimile transmission) confirming the substance of the Notice of Exercise and deliver the same to Seller. Buyer shall cause such executed written confirmation to be received by Seller within one Seller Business Day following the date that the Notice of Exercise or Seller's demand, as the case may be, becomes effective.

³⁷

Australian explanatory note: Should not be needed if VAT clauses are not used.

ANNEX

Emissions Allowance Transaction Accounts and Elections

Part A

Specified Holding Account Details of Party A

Account	Account number and Registry
(1)	[●]
(2)	[●]
(3)	[●]
(4)	[●]
(5)	[●]

Cash Account: []

Part B

Specified Holding Account Details of Party B

Account	Account number and Registry
(1)	[●]
(2)	[●]
(3)	[●]
(4)	[●]
(5)	[●]

Cash Account: []

Part C

Delivery Business Day Location [and VAT Jurisdiction] for Party A

Delivery Business Day Location:	[]
VAT Jurisdiction:	[] ³⁸

Part D

Delivery Business Day Location [and VAT Jurisdiction] for Party B

Delivery Business Day Location:	[]
VAT Jurisdiction:	[] ³⁹

Part E

Elections for Party A and Party B

Payment on Termination for Settlement Disruption:	[Applicable/Not Applicable/As specified in the relevant Confirmation]
Excess Emissions Penalty	[Applicable/Not Applicable/As specified in the relevant Confirmation]
EEP Risk Period	[Not Applicable/As specified in the relevant Confirmation]

³⁸ *Australian explanatory note:* This should not be needed if GST (as opposed to VAT) clauses were used.

³⁹ *Australian explanatory note:* This should not be needed if GST (as opposed to VAT) clauses were used.

EEP Equivalent	[Applicable/Not Applicable/As specified in the relevant Confirmation]
Failure to Deliver (Alternative Method)	[Applicable/Not Applicable/As specified in the relevant Confirmation]